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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 THOMAS HAGEDORN, on behalf of
11 himself and all others similarly situated,

12 Plaintiff,

13 v.

14 NEST LABS, INC.,

15 Defendant.
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Case No. 3:14-cv-00755-VC

STIPULATED PROTECTIVE ORDER

Judge: Hon. Vince Chhabria

Complaint Filed: February 19, 2014

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
12 followed and the standards that will be applied when a party seeks permission from the Court to
13 file material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
19 of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): outside Counsel of Record and House Counsel (as
21 well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that
23 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including, among other things,
26 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
27 responses to discovery in this matter.

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1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action or its parent
5 company or other corporate affiliate. House Counsel does not include Outside Counsel of Record
6 or any other outside counsel.

7 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
8 entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
10 action but are retained to represent or advise a party to this action and have appeared in this action
11 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

12 2.10 Party: any party to this action, or its parent company or other corporate affiliate,
13 including all of their officers, directors, employees, consultants, retained experts, and Outside
14 Counsel of Record (and their support staffs).

15 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
16 Material in this action.

17 2.12 Professional Vendors: persons or entities that provide litigation support services
18 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
19 organizing, storing, or retrieving data in any form or medium) and their employees and
20 subcontractors.

21 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
22 “CONFIDENTIAL.”

23 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected Material
27 (as defined above), but also (1) any information copied or extracted from Protected Material;
28 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

1 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
2 However, the protections conferred by this Stipulation and Order do not cover the following
3 information: (a) any information that is in the public domain at the time of disclosure to a
4 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
5 a result of publication not involving a violation of this Order, including becoming part of the
6 public record through trial or otherwise; and (b) any information known to the Receiving Party
7 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
8 obtained the information lawfully and under no obligation of confidentiality to the Designating
9 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations imposed by
12 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
13 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
14 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
15 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
16 including the time limits for filing any motions or applications for extension of time pursuant to
17 applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
20 or Non-Party that designates information or items for protection under this Order must take care
21 to limit any such designation to specific documents that qualify under the appropriate standards.
22 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
23 clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
24 encumber or retard the case development process or to impose unnecessary expenses and burdens
25 on other parties) expose the Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it designated
27 for protection do not qualify for protection, that Designating Party must promptly notify all other
28 Parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
2 (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
4 designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (*e.g.*, paper or electronic documents, but
7 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
8 Party affix the legend “CONFIDENTIAL” to each page of each document that contains protected
9 material.

10 A Party or Non-Party that makes original documents or materials available for inspection
11 need not designate them for protection until after the inspecting Party has indicated which
12 material it would like copied and produced. During the inspection and before the designation, all
13 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
14 inspecting Party has identified the documents it wants copied and produced, the Producing Party
15 must determine which documents qualify for protection under this Order. Then, before producing
16 the specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each
17 page of each document that contains Protected Material.

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
19 Designating Party identify on the record, before the close of the deposition, hearing, or other
20 proceeding, all protected testimony.

21 (c) for information produced in some form other than documentary and for any other
22 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
23 or containers in which the information or item is stored the legend “CONFIDENTIAL.”

24 (d) the parties do not currently anticipate that this matter will require production of
25 “Attorneys’ Eyes Only” materials, but agree that, in the unlikely event that production of such
26 information becomes necessary, they will meet and confer to amend this Protective Order as
27 necessary to provide an appropriate and mutually agreeable “Attorneys’ Eyes Only” tier of
28 confidentiality.

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is
5 treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
14 process by providing written notice of each designation it is challenging and describing the basis
15 for each challenge. The parties shall attempt to resolve each challenge in good faith and must
16 begin the process by conferring directly (in voice to voice dialogue; other forms of
17 communication are not sufficient) within 14 days of the date of service of notice. In conferring,
18 the Challenging Party must explain the basis for its belief that the confidentiality designation was
19 not proper and must give the Designating Party an opportunity to review the designated material,
20 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis
21 for the chosen designation. A Challenging Party may proceed to the next stage of the challenge
22 process only if it has engaged in this meet and confer process first or establishes that the
23 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
26 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
27 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
28 process will not resolve their dispute, whichever is earlier. Each such motion must be

1 accompanied by a competent declaration affirming that the movant has complied with the meet
 2 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
 3 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
 4 shall automatically waive the confidentiality designation for each challenged designation. In
 5 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
 6 time if there is good cause for doing so, including a challenge to the designation of a deposition
 7 transcript or any portions thereof. Any motion brought pursuant to this provision must be
 8 accompanied by a competent declaration affirming that the movant has complied with the meet
 9 and confer requirements imposed by the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating
 11 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 12 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 13 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 14 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 15 material in question the level of protection to which it is entitled under the Producing Party's
 16 designation until the court rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 19 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 21 the categories of persons and under the conditions described in this Order. When the litigation has
 22 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location and
 25 in a secure manner that ensures that access is limited to the persons authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 27 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 28 information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
3 information for this litigation;

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
6 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
8 reasonably necessary for this litigation and who have signed the "Acknowledgment and
9 Agreement to Be Bound" (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants, mock
12 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
13 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (f) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
16 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
17 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
18 separately bound by the court reporter and may not be disclosed to anyone except as permitted
19 under this Stipulated Protective Order.

20 (g) the author or recipient of a document containing the information, a corporate
21 representative or a custodian or other person who otherwise possessed or knew the information.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
23 LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that compels
25 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
26 must:

27 (a) promptly notify in writing the Designating Party. Such notification shall
28 include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of

1 the information requested; and

2 (3) make the information requested available for inspection by the Non-Party.

3 (c) If the Non-Party fails to object or seek a protective order from this court within
 4 14 days of receiving the notice and accompanying information, the Receiving Party may produce
 5 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
 6 timely seeks a protective order, the Receiving Party shall not produce any information in its
 7 possession or control that is subject to the confidentiality agreement with the Non-Party before a
 8 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
 9 burden and expense of seeking protection in this court of its Protected Material.

10 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 12 Material to any person or in any circumstance not authorized under this Stipulated Protective
 13 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 14 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 15 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
 16 made of all the terms of this Order, and (d) request such person or persons to execute the
 17 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 19 MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 21 produced material is subject to a claim of privilege or other protection, the obligations of the
 22 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 23 provision is not intended to modify whatever procedure may be established in an e-discovery
 24 order that provides for production without prior privilege review. Pursuant to Federal Rule of
 25 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
 26 communication or information covered by the attorney-client privilege or work product
 27 protection, the parties may incorporate their agreement in the stipulated protective order
 28 submitted to the Court.

Nothing in this Protective Order shall require production of information that a party contends is protected from disclosure by the attorney-client privilege, the work product immunity or other privilege, doctrine, right, or immunity. Disclosures among defendants' attorneys of work product or other communications relating to issues of common interest shall not affect or be deemed a waiver of any applicable privilege or protection from disclosure. Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privilege or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or any other federal or state proceeding. A producing party may assert privilege or protection over produced documents at any time by notifying the receiving party in writing of the assertion of privilege or protection. In addition, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been inadvertently produced.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request

1 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
 2 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
 3 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the
 4 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e)
 5 unless otherwise instructed by the court.

6 13. FINAL DISPOSITION

7 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 8 Receiving Party must return all Protected Material to the Producing Party or destroy such
 9 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
 10 compilations, summaries, and any other format reproducing or capturing any of the Protected
 11 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
 12 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 13 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
 14 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 15 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
 16 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 17 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 18 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 19 product, and consultant and expert work product, even if such materials contain Protected
 20 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 21 this Protective Order as set forth in Section 4 (DURATION).

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

23 Dated: July 17, 2014

KEKER & VAN NEST LLP

25 By: /s/ Simona A. Agnolucci
 26 BENEDICT Y. HUR
 SIMONA A. AGNOLUCCI

27 Attorneys for Defendant
 28 NEST LABS, INC.

1 Dated: July 17, 2014

WILLIAMS DIRKS DAMERON LLC

2
3 By: /s/ Eric L. Dirks
ERIC L. DIRKS

4 Attorneys for Plaintiff
5 THOMAS HAGEDORN

6 **ATTESTATION**

7 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the
8 filing of this document has been obtained from the other signatories.

9
10 Dated: July 17, 2014

/s/ Simona A. Agnolucci
11 Simona A. Agnolucci

12
13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

14
15 DATED: July 18, 2014

16 United States

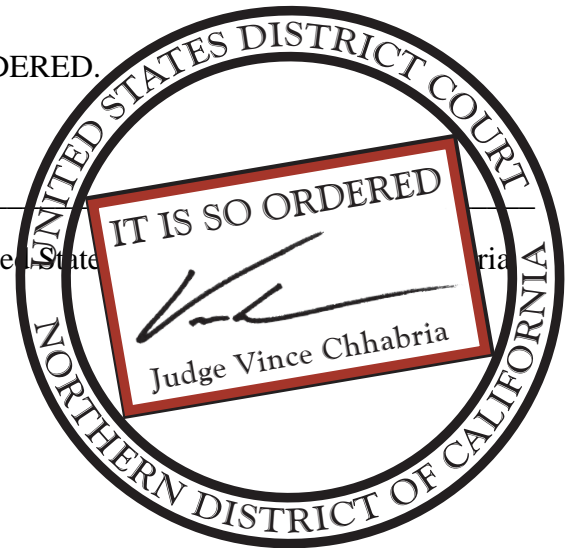


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
_____, declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Northern District of California on June ___, 2014 in the case
of *Thomas Hagedorn v. Nest Labs, Inc.*, Case No. 3:14-cv-00755-VC. I agree to comply with and
to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
I solemnly promise that I will not disclose in any manner any information or item that is subject
to this Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ of
_____ as my
California agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____